degree and not of substance: secondly, the principle that costs are an indemnity applies in both cases. It is common ground that Section 41 of Ordinance No. 22 (Crown Suits) is not applicable to the present proceedings.

The Attorney-General bases his claim to costs on two grounds:—

(1) the real litigant is the Crown and on general principles the Crown, like any other litigant, is entitled to be indemnified for the costs incurred through its salaried servant, the Attorney-General or Solicitor-General or assistant to the Attorney-General having to devote his services to this litigation (cf. *Henderson* v. *Merthyr Tydfil Urban District Council*, (1900) 1 Q.B. p. 434);

(2) the right to costs is one of the rights which are conferred on the Attorney-General under Section 59 of Ordinance No. 22 (Crown Suits).

As to the first ground: the Respondent to the present application admitted that the Crown would be entitled to costs if it were the real litigant, but he denied that the Crown was the real litigant, and he sought to draw a distinction between proceedings in which the Crown is a party and proceedings in which not the Crown but the Attorney-General is a party.

As to the second ground: the Respondent contended that the right to receive costs was not one of the rights conferred on the Attorney-General under Section 59, because the circumstances of the Colony and the constitution of its Government and Courts do not admit of the Attorney-General having the right to costs as in England; in particular, he alleged that the Attorney-General of England is in a different position, because he receives fees in addition to his salary and because he must have been retained by a solicitor: he further contended that the onus is on the person seeking to show that the Attorney-General of the Straits Settlements has the same rights as the Attorney-General of England, and that in this instance the onus had not been discharged.

Regarding the first ground: in my opinion the alleged distinction between proceedings in which the litigant is the Crown and proceedings in which the litigant is the Attorney-General, is fallacious: I conclude without hesitation that in such proceedings as this the real litigant is the Crown and not the Attorney-General: that that in the case seems to me to be established beyond question by the situation which arises when the Attorney-General sets up a general claim of the Crown which is at variance with the interests of a public charity, or where the Attorney-General claims property for charitable purposes inconsistent with the rights of property of the Crown; in such cases the Solicitor-General is made a defendant as the officer on whom it devolves to represent the rights of the public charity or the rights of the Crown, as the case may be; in such cases the real litigant is the King, who as *parens patriae*, is supposed to superintend the administration of all public charities, and acts in this behalf by his Attorney-General or his Solicitor-General: as was said by the Vice-Chancellor in the case of the *Attorney-General* v. *Compton* (I Younge and Collyer, New Reports, 417 at p. 427) "it is the privilege of the public that the Crown should be entitled to intervene by its officer."

Regarding the second ground: I hold that the word "rights" in Section 59 of Ordinance No. 22 (Crown Suits) is wide enough to include the right to receive costs, and I hold that the circumstances of the Colony and the constitution of its Government and Courts do not preclude the Attorney-General from having this right: I hold further that the onus of showing that the Attorney-General of the Straits Settlements is precluded from having a right which the Attorney-General of England has, lies upon the person who alleges that the Attorney-General of the Straits Settlements is so precluded; since the last portion of Section 59 is in the nature of a proviso rather than of an exception; [*Rex* v. *James*, (1902) 1 K. B. p. 540 and the authorities discussed therein].

My conclusion is that the Attorney-General has the right to receive what are called "profit costs," in the present case.

I uphold the objections of the Attorney-General, and I order that the charges in the bill, with the exception of Item 5, be allowed.

[APPELLATE CRIMINAL JURISDICTION]

GERATHY, J.

September 27, 1933.

REX v. SINGAPORE BRITISH MALAY FOOTBALL CLUB.

[SINGAPORE MAGISTRATE'S APPEAL No. 56 of 1933]

Ordinance No. 45 (Common Gaming Houses) Section 4 (c)—Social Club.

If the primary object of a social club is or has become gaming and its premises are kept or used primarily for that purpose then such a social club is a common gaming house within the meaning and subject to the provisions of Ordinance No. 45 (Common Gaming Houses).

Magistrate's Appeal.

The Appellants being a social club were convicted by the Magistrate of an offence punishable under S. 4(c) of Ordinance No. 45 (Common Gaming Houses) and were fined $10. From this conviction they appealed.

Knowles for Appellant.

Bassett, D.P.P., for Crown.

GERAHTY, J.—This is an appeal by the Singapore British Malay Football Club, represented by its President and Secretary, against a conviction of an offence punishable under section 4(c) of Ordinance No. 45 (Common Gaming Houses) namely, that on or about the 21st May,

1933 the said Club did use premises No. 124 Arab Street, as a common gaming house.

The facts of the case are not in dispute. It appears that this club was formed some years ago as a football club and for social purposes, including certain benefit schemes, members paying a monthly subscription of 50 cents. The club premises consist of one long open room furnished with two tables, one round and one oblong. Some newspapers are provided by the club and food can be supplied to members from a shop opposite.

Acting under a search warrant an Assistant Superintendent of Police raided the premises at 2-30 p.m. on 21st May. According to his evidence he saw 15-20 men standing or sitting round the oblong table by the window and one or two men not near the table. The men at the table were playing a gambling game, known as, "Dado blangkas" for money stakes. The police took possession of certain gambling implements and took the names and addresses of those present. Only members of the club were found on the premises.

It is contended by Mr. Knowles for the Appellant that (1) the evidence called by the prosecution proved that the place, namely, 124 Arab Street, Singapore, was a private club and not a place kept or used as a Common Gaming House, (2) the evidence for the prosecution rebutted the presumption, if any, under section 14 of the Ordinance and (3) there was no evidence that the place was kept for habitual gaming.

In support of his contention Mr. Knowles cited the following authorities:—

Rex v. *Li Kim Poat and another*, Mal.L.J. Vol. II., No. VII., 164.
Oldham v. *Ramsdem*, 32 L.T.R. (N.S.) 825.
Downes v. *Johnson*, (1895) 2 Q.B. 203.
Ellesmere v. *Wallace*, (1929) 2 Ch. 1.
Attorney General v. *Luncheon & Stores Club, Ltd.*, (1929), A.C. p. 400.

Two questions arise for decision on this appeal.

The first is one of law. Does a social club fall within the ambit of Ordinance No.45 (Common Gaming Houses) and, if so, in what circumstances?

In my opinion the law in the Colony applicable to this question may be regarded as having been settled by the Court of Apppeal in *Rex* v. *Li Kim Poat and another*, in which the judgment of Stevens, J. in *Rex* v. *Fong Chong Cheng and others*, (1930) S.S.L.R. 139 is cited with approval, and the law as so settled may be stated briefly as follows:

The definition of a Common Gaming House in section 2 of the Ordinance is as follows:—

> "Common Gaming House" includes any place kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming, whether the public or any class of the public has or may have access thereto or not, and any place kept or used for the purpose of a public lottery;"

On the true construction of this definition, it follows that members of a club not being a class of the public, the premises of a social club used by them do not become a "Common Gaming House" within the first part of the definition "merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose" (*per* Stevens J. in *Rex* v. *Fong Chong Cheng and others*), but such premises do become a "Common Gaming House" within the second part of that definition if they are used for habitual gaming, the test being whether such premises are primarily kept or used for the purpose of gaming. Notwithstanding then that the avowed object of a club is to provide social amenities to its members, if, in fact, the primary object of that club is, or has become, gaming, and its premises are kept or used primarily for that purpose, then such a club is a "Common gaming house" within the meaning of and subject to the provisions of the Ordinance.

In general the purpose of the Ordinance is to suppress common gaming houses and public lotteries. As Mr. Roland Braddell puts it on page 7 of his Commentary on Ordinance No. 45 (Common Gaming Houses) "The mischief of a common gaming house is the same as that of any public nuisance of a like nature, namely, that it is a great temptation to idleness, and apt to draw together great numbers of disorderly persons".

Surely an association to which individuals subscribe for purposes of mutual entertainment and convenience, under the designation of a social club, and whose activities among themselves if not exclusively, are primarily directed to gambling, is engaging in the very mischief which the Ordinance purports to suppress. I use the expression "not exclusively" because I am of opinion that the provision of such other amenities as reading material, meals on the premises and like conveniences, are merely incidental, so long as the primary object of the club is gaming, for even the most enthusiastic gambler demands his moment of leisure and has to eat to live. If people are so foolish as to choose such an institution as a luncheon club or a haven of rest they do so at their own risk.

The law in England on this point is clearly stated by Hawkins, J. in *Jenks* v. *Turpin* L.R. 13 Q.B.D. at p. 506 as follows:—

> "If the house in question had been opened and used for a double purpose, viz:—as an honest social club for those who did not desire to play, as well as for the purposes of gaming for those who did, it would not the less be a house opened and kept 'for the purpose of Gaming'."

It makes no difference that the use of the house and the gaming therein is limited to the subscribers or members of the club, and that it is not open to all persons who might be desirous of using it. It is not a public, but a common gaming-house, that is prohibited.

The second question is one of fact.

Was gaming the primary object of the appellant club on or about the 21st May, 1933, or were facilities for gaming merely incidental to its amenities?

The answer to this question depends entirely upon the evidence by the prosecution in the lower Court.

It appears that the premises were watched on the 10th, 11th, 12th, 13th and 14th May by a detective, who was also a member of the club. On each occasion it is stated that gambling was in progress and sums of money varying from $80 to $200 were seen upon the table. Another witness, also a member of the club, stated that "the club gets most of its revenue from a 10% commission from winning bankers in the gambling." Probably this is what is represented by "*Hadia* member". The same witness stated that in April last he and some other members were in arrears for some months with subscriptions and that at a general meeting it was decided to allow a payment of $1 in lieu of all arrears. It is in evidence that the profit and loss account for the second half of 1932 shows three items of revenue: (1) Subscriptions $39 (2) rent for 8 months of a house owned by the club $240, (3) "*Hadia* member" $853.14.

The accounts contain no record of any payments in respect of birth, marriage and death benefits. It is however in evidence that one witness so far back as 1930 or 1931 received $10 for each of his two children who died. That same witness stated that though he had been a member of the club since 1929 he has heard nothing of any foot-ball team.

In my view the only conclusion that can reasonably be drawn from this evidence is that, whatever the objects of the club may have been at its inception, its primary object in May last was gaming.

There remains the question of the presumption under section 14 of the Ordinance.

I am unable to agree with counsel's contention that the presumption was rebutted by the evidence for the prosecution. On the contrary I am of opinion that it is clearly proved that gaming instruments or appliances were found in the premises of the appellant club in the circumstances indicated by the evidence and that this section places upon the officers of the club the burden of proving that the premises were not a "common gaming house" within the meaning of the law, and this they did not attempt to do.

For these reasons I am of opinion that the conviction is correct and the appeal must be dismissed accordingly.

Appeal dismissed.

Solicitors for Appellant—*Braddell Brothers.*

J. H. Bassett, (D.P.P.), for Respondent.

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

September 30, 1933.

In the Matter of 2 Indentures of Settlement both dated 2nd day of August, 1888, and made respectively between Tan Swee Hong, Yeo Cheng Keat of the one part and Khoo Cheng Teong, Khoo Cheng Teow, Khoo Teck Pye, Khoo Yew Choon of the other part and the said Tan Swee Hong, Yeo Cheng Keat of the one part and the said Khoo Cheng Teong, Khoo Cheng Teow, Khoo Teck Pye and Khoo Ton Nee of the other part.

[SINGAPORE ORIGINATING SUMMONS No. 70 of 1933]

Charitable use—Rule against perpetuities—Gift to a Chinese Joss.

Land conveyed to certain purchasers for them to apply the rents and profits in perpetuity for the benefit of a Chinese Joss does not constitute a charitable trust. Such an assignment is void as being opposed to the rule against perpetuities.

Originating Summons.

The facts are set out in the Judgment.

Burke for Applicants.

Solicitor-General for Attorney-General.

Walters for Trustees and persons appointed to represent parties interested.

MILLS, J.—The present application concerns the construction of two assignments dated the 2nd August, 1888; as the same reasoning applies to both assignments I will consider only one assignment which I will call "the assignment."

The assignment recites that the sum of Three thousand Dollars "is money belonging as to Dollars Two Thousand ($2,000) thereof to the Chinese Joss "*Bee Siok Chor* . . . and as to Dollars One Thousand ($1,000) thereof to the Chinese Joss "*Ee Hian Kong*": and in the operative part, land is conveyed to the Purchasers upon trust to apply the rents and profits for the benefit of the said Joss "*Bee Siok Chor*" and the said Joss "*Ee Hian Kong.*"

The Court is asked, *inter alia*, to declare that the land is held on trust for a charitable use and that therefore the rule against perpetuities does not apply.

In construing the assignment, the Court must put itself in the position of the Purchasers and construe their language according to their knowledge, but must avoid letting in extrinsic evidence of what the Purchasers intended under the guise of evidence as to the circumstances existing when the assignment was made.

The word "*Joss*" means "Chinese household divinity" or "Chinese idol": I find that in the circumstances of this case the former meaning was intended.

"The word "*Kong*" and "*Chor*" both mean "ancestor," but "*Chor*" is applied to the more remote ancestor.

"*Bee Siok*" and "*Ee Hian*" are the names of deceased persons: I find as a fact that Bee Siok was the great-great-great grand father and Ee